

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE  
AT GREENEVILLE

MICHAEL D. FERGUSON,	)	
Petitioner,	)	
	)	NO. 2:04-CR-04
v.	)	NO. 2:09-CV-246
	)	
UNITED STATES OF AMERICA,	)	
Respondent.	)	

**ORDER**

This criminal matter is before the Court to consider the Report and Recommendation of the United States Magistrate Judge dated March 14, 2013. [Doc. 147]. The Magistrate Judge recommends that the defendant's Motion Under 28 U.S.C. § 2255 To Vacate, Set Aside, Or Correct Sentence By A Person In Federal Custody in regard to Issues 1, 2 and 3 be granted.<sup>1</sup> The government has filed a notice of no objections to this report which also indicates that the victim in this case would prefer that the petitioner receive a sentence of twenty years rather than a new trial. [Doc. 148]. It should also be noted that in petitioner's response to the brief of the government he asserts the proper remedy in this case is to "re-sentence the Defendant to 20 years." [Doc. 146],

After careful consideration of the Report and Recommendation of the United States Magistrate Judge, the petitioner's motion, the response of the government, the transcript of the evidentiary hearing held on September 6, 2012, and for the reasons set out in that Report and Recommendation which are incorporated by reference herein, it is hereby **ORDERED** that this

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<sup>1</sup>This Court has previously disposed of Issues 4, 5, 6 and 7 in a Memorandum Opinion and Order dated July 3, 2012. [Doc. 130]

Report and Recommendation is **ADOPTED** and **APPROVED**, and that the petitioner's motion is **GRANTED** in regard to Issues 1, 2 and 3. [Doc. 115]. Consistent with this ruling, it is hereby **ORDERED** that the petitioner's sentence is **REDUCED** from “ 240 months as to Count One and 60 months as to Count Three to run consecutively for an effective term of 300 months” to “240 months on Count One and 60 months on Count Three to run concurrently for an effective term of 240 months.”

ENTER:

s/J. RONNIE GREER  
UNITED STATES DISTRICT JUDGE